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REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS  
NATIONAL TELECOMMUNICATIONS COMMISSION  
BIR Road, East Triangle, Diliman, Quezon City

26 February 2003

IB DKT 03-38

THE CHAIRMAN  
FEDERAL COMMUNICATIONS COMMISSION  
Washington DC  
USA

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FEB 28 2003

Federal Communications Commission  
Office of the Secretary

Dear Mr. Chairman:

We are forwarding to your office the position paper of Bayan Telecommunications, Inc. on the petition filed by AT&T Corporation docketed under IB Docket No. 03-38.

Thank you

Very truly yours,

*Armi Jane R. Borje*  
ARMI JANE R. BORJE  
Commissioner

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17 February 2003

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**NATIONAL TELECOMMUNICATIONS COMMISSION**  
BIR Road, Quezon City  
Philippines

FEB 28 2003

Federal Communications Commission  
Office of the Secretary

Attention

**Hon. Armi Jane R Borje**  
Commissioner

**Hon. Kathleen G. Heceta**  
Deputy Commissioner

**Hon. Jorge V. Sarmiento**  
Deputy Commissioner

Re : **As Stated.**

Dear Mesdames/Sir:

We write in connection with a Public Notice issued by the Federal Communications Commission of the United States of America, dated February 10, 2003 and entitled "*Petitions for Protection from Whipsawing on the U.S.-Philippine Route*". Said matter has been docketed under IB Docket No. 03-38 and concerns a Petition filed by AT&T Corp. requesting the Federal Communications Commission to "prohibit U.S. carriers from making payments" to several carriers in the Philippines, including Philippine Long Distance Telephone Co. (PLDT), Globe Telecommunications, Inc. (Globe), Digital Communications Philippines, Inc. (Digitel), Bayan Telecommunications Inc. (*BayanTel*), Smart Communications, Inc. (Smart) and Subic Telecom, "until international service is fully restored". We understand that MCI-Worldcom has similarly filed a Petition against PLDT.

We take exception to the allegations, as we, likewise, take note of the jurisdictional questions involved.

**BAYAN TELECOMMUNICATIONS, INC.**  
BayanTel Corporate Center, Maginhawa corner Malingap Streets,  
Teachers' Village, Diliman, Quezon City  
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We wish to inform the Commission that we have prepared a Position Paper in answer to the allegations made by At&T Corp. against BayanTel, specifically, alleged disruption of AT&T circuits engendered by "unilateral increase in the rate for termination services" for Philippine bound traffic. Said disruption has been described by the petitioners as "whipsawing" and has alleged that the same constitutes "anti-competitive behavior" on the part of Philippine carriers. In the said submission, we have clarified the Position of BayanTel with respect to AT&T and the bilateral negotiations that have so far failed to produce any mutually acceptable commercial terms to replace the termination rates which expired last December 31, 2002.

We respectfully submit that it is AT&T that is actively engaged in anti-competitive behavior to the detriment of Philippine Carriers and the Philippine public. In this connection, we are requesting that the attached Position Paper be taken cognizance of by the Honorable Commission, with the request, likewise, that the same be forwarded, through the Commission, to its counterpart agency in the United States. We make this request in recognition of the Commission's role as the agency exercising regulatory and supervisory authority over all Philippine carriers. This will enable our position to be taken account of by the FCC in its determination of the issues involved.

We trust on your kind consideration of this request.

Thank you and best regards.

  
**GARY B. OLIVAR**  
Chief Finance Officer



**POSITION PAPER REGARDING  
AT&T'S EMERGENCY POSITION  
FOR SETTLEMENTS STOP PAYMENT ORDER AND  
REQUEST FOR IMMEDIATE INTERIM RELIEF**

**1. BayanTel is *not* engaged in "whipsawing" conduct**

BayanTel continues to accept all BayanTel-terminating traffic from US carriers, including AT&T. BayanTel **is** not blocking traffic into its network as a result of the termination rate dispute or the expiration of its commercial agreements (last December 31, **2002**). In fact, in February 2003, BayanTel has observed an increase in traffic volumes coming into its network which includes the traffic coming from AT&T.

**2. AT&T's actions are anti-competitive.**

AT&T **has** not shown interest in negotiating termination rates with BayanTel and continues to attempt to force BayanTel to accept the rate that it is willing to pay.

AT&T's reaction to the new rate proposal from BayanTel **is** a letter from its legal counsel threatening settlement disputes and non-payment as well as filing a petition with the FCC enjoining other **US carriers** to do the same. This attitude is further demonstrated **by** AT&T in its email dated February 11, **2003**, where it proposed a rate substantially lower **than** the **FCC** benchmark and which totally ignores the increase in local Philippine interconnect charges.

**Since** the abolition of the proportionate return traffic arrangement (PRTA) regime, US carriers including AT&T have routinely withheld traffic allocation and re-routed Philippine-traffic to coerce Philippine carriers such as BayanTel to accept their proposed rate reductions.

This forces the Philippine carriers to "bid" for AT&T's traffic to a point where today, operations can no longer be supported by AT&T's desired rate. BayanTel cannot accept terminating traffic at a loss,

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**3. BayanTel is not ignoring regulatory directives.**

BayanTel is in compliance with the Memorandum Order from the National Telecommunications Commission of the Philippines dated 31<sup>st</sup> January 2003 and continues to accept incoming traffic from US carriers and other correspondents worldwide.

However, it should be noted that under its existing service agreement with AT&T, BayanTel has the right to request a termination of bilateral relations with AT&T with the expiration of applicable termination rates.

**4 BayanTel has not discriminated against AT&T which, in any case, has alternative termination options.**

BayanTel's proposed international settlement rates have been offered to all of its correspondents worldwide. The rate is brought about by the increase in local charges and considers the revenues that are needed in order to operate viably.

AT&T has correspondent relations with many other Philippine and Asian carriers and can re-allocate and re-route its traffic to other routes where necessary. AT&T is one of the biggest international operators with the most number of interconnected carriers worldwide.

BayanTel continues to accept all traffic from other US carriers. In fact, it has not received any complaint from its subscribers that they cannot receive any incoming calls from the USA.

**5. AT&T's petition does not serve the interests of US consumers and is anti-competitive to other USA carriers.**

AT&T has not provided evidence that past reduction of its settlement payments have had a direct and proportionate reduction of the collection rates that it charges to its customers for Philippine terminating traffic.

AT&T's petition for non-payment by all US carriers will damage the business relationships between these carriers and their Philippine counterparts. U.S. and Philippine carriers who cannot afford prolonged settlement disputes may be compelled to discontinue services. This will greatly affect the operations and businesses of Second Tier Carriers who serve certain niche markets in the USA and who do not enjoy the benefits of having diverse routes and sources of revenue like AT&T. This effectively reduces competition for AT&T in the US market.

Furthermore, less competition and the discontinuance of direct services between the Philippines and the USA will definitely affect the US consumers because this will result in higher cost of services

*At*

Premises considered, the Petition docketed under IB Docket No. 03-38 should be dismissed for lack of merit.



**Chief Enforcement Officer**